

News & Types: Immigration Update

# Business Immigration Weekly for March 17, 2014

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Practices: Immigration

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## April 2014 Visa Bulletin Update

Today, the U.S. Department of State ("DOS") released its April 2014 Visa Bulletin which shows the availability of employment-based immigrant visa categories for the month of March. Below is a summary of this month's highlights:

- The EB-3 categories for World, China and Mexico continue to advance from September 1, 2012 to October 1, 2012.
- The EB-2 China category has advanced from February 15, 2009 to March 8, 2009.
- The EB-2 India category remains at November 15, 2004 after the prior retrogression of four years several months ago.
- The EB-3 India category remains at September 15.

## Forecasted Availability

In late 2013, the DOS has indicated the following visa availability:

- B-1: will remain current.
- EB-2: World category will remain current; China will advance three to five weeks; and India will show no further advancement.
- EB-3 China: Although the DOS had indicated a potential retrogression for the February 2014 Visa Bulletin, this category continues to advance through April 2014. It is not likely to last.
- EB-3 India: will show no further advancement.

Please note that month-to-month availability of immigrant visas varies and depends on many factors. These forecasts do not guarantee future availability.

## Comparison to Prior Months

The following is a comparison of priority date movement since the inception of the current retrogression in 2007:

	Dec 2007	Jun 2008	Aug 2009	Sept 2012	Jan2014	Mar 2014	Apr 2014
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EB-3 World	09/01/02	03/01/06	U	10/01/06	04/01/12	09/01/12	10/01/12
EB-2 China	01/01/03	04/01/04	10/01/03	U	12/08/08	02/15/09	03/08/09
EB-3 China	10/15/01	03/22/03	U	12/15/05	04/01/12	09/01/12	10/12/12
EB-2 India	01/01/02	04/01/04	10/01/03	U	11/15/04	11/15/04	11/15/04
EB-3 India	05/01/01	11/01/01	U	10/08/02	09/01/03	09/15/03	09/15/03
EB-3 Other Workers	10/01/01	01/01/03	U	10/01/06	04/01/12	09/01/12	10/01/12

Additional information about the movement of the employment-based immigrant visa priority dates will be contained in our firm's future Immigration Updates when it becomes available.

**H-2B CAP FOR FIRST HALF OF FISCAL YEAR 2014 REACHED**

The US Citizenship and Immigration Services (USCIS) has announced that as of March 14, 2014 it reached the statutory cap of 33,000 H-2B visas for fiscal year 2014 requesting a start date of April 1, 2014. The H-2B visa for Temporary Non-Agricultural Workers requires employers to establish that the need for the foreign worker's services is temporary, that there are insufficient U.S. workers that are able, available, qualified and willing to accept the H-2B position and that the hiring of a foreign worker will not adversely affect the working conditions and wages of U.S. workers. Certain H-2B petitions are exempt from the statutory cap and these include H-2B workers that are extending their status; fish roe processors, technicians or supervisors; and workers performing services in the Commonwealth of Northern Mariana Islands or Guam (between until December 31, 2014).

**L-1 DENIAL RATES KEEP CLIMBING - STUDY FINDS**

The National Foundation for American Policy, a non-profit, non-partisan research organization released a report this month detailing the USCIS' record high rate of L-1B denials. The L-1B Intracompany Transferee visa allows foreign workers with specialized knowledge to be transferred to the United States to work at a U.S. entity that is affiliated with the worker's foreign employer. The L-1B visa has a maximum period of authorized stay of five years. The report indicates that although no new rule-making or laws have been enacted that would affect the L-1B program, for fiscal year 2013 the USCIS denied 34 percent of L-1B petitions climbing from the fiscal year 2006 denial rate of six percent. The report also provides data on the USCIS rates for issuance of Requests for Evidence (RFE). The USCIS rate, which had been at 10 percent rose abruptly in 2008 to almost 50 percent. This rise coincides with the collapse of the U.S. economy. Remarkably, the figure continued to climb to 63 percent in fiscal year 2011 and has remained at a robust 43 percent and 46 percent for fiscal years 2012 and 2013, respectively. Most alarmingly, the report indicates that petitions requesting L-1B status on behalf of Indian workers were disproportionately denied more than other petitions. The denial rate for L-1B petitions for Indian nationals went from 0.9 percent in fiscal year 2007 to 22.5 percent in fiscal year 2009. Not surprisingly, the USCIS failed to release country-specific figures for fiscal years 2012 and 2013 although the report cites that attorneys and L-1B employers continue to cite high denials for Indian L-1B petitions. The report substantiates what immigration attorneys have known all along, that the decline of the U.S. economy

translates into a protectionist attitude at the USCIS without there having been any rule-making or legal basis for the increased scrutiny. L-1B workers transfer proprietary technology and specialized skills from abroad to the United States, thereby contributing to the overall productivity of the American economy. Unfortunately, when multinational companies are unable to transfer L-1B workers, either because the business immigration climate is so uncertain they don't want to risk a denial of their L-1B petition or their petition has already been denied, the American economy and workers suffer more due to this loss of productivity and innovation.

### **USCIS RELEASES FORM I-9 INFORMATION SHEET**

The USCIS released a one-page information sheet directed to employees that describes the process of Form I-9, Employment Eligibility Verification, completion. The Form I-9 must be completed and maintained for all employees and is the manner in which the U.S. government ensures that employers only hire employment authorized workers. The information sheet is a part of an increased effort on behalf of the USCIS to educate employers and employees about their Form I-9 legal obligations. The information sheet outlines what the employee is responsible for and, more importantly, for employers, instructs employees where they can turn if they believe that they are being treated unfairly in the Form I-9 completion process.